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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,886

04/26/2007

Norwin W. Wolff

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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD, MA 01742-9133

EXAMINER

TISCHLER, FRANCES

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

12/24/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/591,886	Applicant(s) WOLFF ET AL.	
	Examiner FRANCES TISCHLER	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,7,8,10-12,14-16,18,19,21-24,28,31,41-45,53-56 and 58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,7,8,10-12,14-16,18,19,21-24,28,31,41-45,53-56 and 58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on 10/19/09 has been entered.

Claim 1 has been amended. Claims 2, 3, 5, 6, 9, 13, 17, 20, 25 – 27, 29 – 30, 32 – 40, 46 – 52, 57 and 59 - 89 have been cancelled. Claims 1, 4, 7, 8, 10 – 12, 14 – 16, 18, 19, 21 – 24, 28, 31, 41 – 45, 53 – 56 and 58 are now pending.

Claim Rejections - 35 USC § 102/103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 4, 7, 8, 10-12, 14-16, 18,19, 21-24, 28, 31, 41-45, 53-56 and 58 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Das et al (US5,948,396).

Das discloses (abstract, 1:60 – end, 2:1 – end, 3:1 - 16) a hair fixative amphoteric polymer composition comprising a first polymer with anionic character and a second polymer with cationic character. A preferred embodiment comprises (1) amine-containing ethylenically unsaturated monomer such as dimethylaminoethyl methacrylate, (2) hydroxyl-containing ethylenically unsaturated monomer such as hydroxyethylemethacrylate or hydroxypropyl methacrylate, (3) acrylic acid, and (4) styrene or butyl methacrylate [reading on Applicant's first and second polymers with anionic and cationic monomer units,

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water soluble and insoluble monomer units and multifunctional monomer units].

Das further discloses that ammonia can be added (3:52 - 56) [as claimed].

Examples 1 – 5 disclose that the polymerization is performed by charging reactants, including the above monomers 1 – 4, into a reaction vessel, as is disclosed in the instant specification. Therefore, although Das does not expressly disclose an IPN, the polymer composition is inherently an IPN. Since the PTO does not have proper means to conduct experiments, the burden of proof is now shifted to applicant to show otherwise. In re Best, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977); in re Fitzgerald, 205 USPQ 594 (CCPA 1980).

Das discloses (2:3 – 5) 1 – 20% carboxylate functionality [reading on Applicant's 12 - 20%].

Das discloses (3:40 – end, 4:1 – 9, examples) neutralizing agents and alcohol and volatile solvents in amounts of 20 – 50% [reading on Applicant's 30 – 95%]. Dai also discloses the addition of propellants (4:10 – 13) [as claimed].

The molecular weight ranges from 1,500 to 1,000,000 [as claimed], and the glass transition temperature ranges from 40 – 80°C (3:34 – 40) [touching on Applicant's less than about 40°C].

Response to Arguments

Applicant's arguments with respect to claims 1, 4, 7, 8, 10-12, 14-16, 18, 19, 21-24, 28, 31, 41-45, 53-56 and 58 have been considered but are moot in view of the new ground(s) of rejection.

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Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANCES TISCHLER whose telephone number is (571)270-5458. The examiner can normally be reached on Monday-Friday 7:30AM - 5:00 PM; off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ling-Siu Choi/
Primary Examiner, Art Unit 1796

Frances Tischler
Examiner
Art Unit 1796

/FT/